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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

AUG 12 1998

In the Matter of	)	
	)	
Association for Local Telecommunications	)	File No. CCB/CPD 97-30
	)	
Request for Expedited Letter Clarification	)	
Inclusion of Local Calls to ISPs Within Reciprocal	)	
Compensation Agreements	)	

### **COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION**

MCI Telecommunications Corporation (MCI) hereby submits its Comments in support of the above-referenced letter filed by the Association for Local Telecommunications (ALTS). MCI fully supports ALTS' request that the Commission expeditiously clarify that competitive local exchange carriers (LECs) are entitled to receive reciprocal compensation pursuant to section 251(b)(5) of the Communications Act of 1934 (Act) for the transport and termination of Internet traffic.

#### **I. INTRODUCTION**

Recent attempts by incumbent LECs to avoid their reciprocal compensation obligations under section 251(b)(5) for the transport and termination of local Internet service provider (ISP) traffic by competitive LECs are anticompetitive and discriminatory. The Commission has clearly intended that enhanced and information service providers (ESPs/ISPs) be treated like any other similarly-situated end users. Incumbent LECs continue to offer ISPs local business rates but are trying to deny competitive LECs the same option in order to compete. Competitive LECs should similarly be able to offer ISPs local rates for traffic exchanged through interconnection arrangements with incumbent LECs. The



incumbent LECs are denouncing the Commission's local competition rules designed to encourage competitive LECs to offer competitive telecommunications services. Incumbent LECs should not be permitted to unilaterally declare that ISP traffic is interstate and refuse to compensate competitive LECs for transport and termination of such traffic.

At a minimum, the Commission must expressly prohibit incumbent LECs from discriminatory treatment of ISP traffic exchanged with competitive LECs in comparison with adjacent LECs. Generally, incumbent LECs treat ISP traffic exchanged with other incumbents as local traffic. When it comes to compensating the competitive LECs for transport and termination, however, the incumbent LECs seek to attack the mutual compensation mechanism established by the Commission, states, and negotiated by the incumbent LECs themselves in interconnection agreements. The Commission must ensure that the incumbent LECs treat their competitors in the same manner as they are currently treating themselves. Absent parity for purposes of reciprocal compensation, ISPs would be discouraged from taking service from competitive LECs through artificially higher rates.

## **II. THE COMMISSION SHOULD CLARIFY THAT COMPETITIVE LECS ARE ENTITLED TO RECIPROCAL COMPENSATION FOR THE TRANSPORT AND TERMINATION OF ISP TRAFFIC**

The Commission has traditionally exercised its authority over information and enhanced services and has sought to maintain low rates in order to encourage the growth and use of such services by consumers.<sup>1</sup> The Commission has afforded ISPs an exemption from paying interstate access charges in part to prevent them from paying access rates that are well above cost. Consequently, ISPs may purchase service from incumbent LECs under local exchange service tariffs as end users. The Commission has affirmed its intent that ISPs be

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<sup>1</sup> See, e.g., MTS and WATS Market Structure, 97 FCC 2d 682, 715 (1983); Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631, 2633 (1988) (ESP Exemption).

treated as end users on numerous occasions.<sup>2</sup> ISPs are to be assessed local business exchange rates rather than interstate or intrastate access rates.

Despite the incumbent LECs' attempts to misconstrue the Commission's orders<sup>3</sup> to their economic and competitive advantage,<sup>4</sup> the Commission's policy continues to encourage the growth of the information services industry by keeping rates low. Nothing in the Commission's recent orders has altered this policy. The Commission recently had the opportunity to change the pricing structure for ISPs but declined to do so. In its Access Charge Order, for example, the Commission concluded that "the existing pricing structure for ISPs should remain in place and incumbent LECs will not be permitted to assess interstate per-minute access charges on ISPs."<sup>5</sup> ISPs therefore will continue to operate under the current pricing structure as any other similarly-situated end user. The Commission has determined that this would avoid disrupting the growing information services industry and advance the Act's goal to "preserve the vibrant and competitive free market that presently exists for the Internet."<sup>6</sup>

The Commission should expressly confirm incumbent LECs should not be the only LECs entitled to offer ISPs local rates for transport and termination. ISP traffic is to be

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<sup>2</sup> Id.; see also, Amendments of Section 64.702 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd 4524, 4535 (1991).

<sup>3</sup> See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325 (rel. Aug. 8, 1996); Access Charge Reform, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Docket No. 96-262, FCC 96-488 (rel. Dec. 24, 1996).

<sup>4</sup> Joint Comments of Bell Atlantic and NYNEX on Notice of Inquiry, CC Docket No. 96-263 at 13-15 (filed March 24, 1997).

<sup>5</sup> Access Charge Reform, First Report and Order, CC Docket No. 92-262, FCC 97-158, at ¶ 344 (rel. May 16, 1997).

<sup>6</sup> Id.

treated no differently than other local traffic. As long as the Commission determines that ISPs should be treated like local end users, competitive LECs should similarly be able to offer ISPs the option of local rates in competition with incumbent LECs. Incumbent LECs would have a competitive advantage over new entrants if only the incumbents were able to offer local rates to ISPs.

The Commission's rules are designed to encourage competitive LECs to offer competitive telecommunications services to all users, including ISPs. Absent the right to receive reciprocal compensation for the transport and termination of ISP traffic, competitive LECs could not effectively compete for ISP business due to the different expenses for the exchange of ISP traffic to their customers. This would undermine the ability of competitive LECs to serve ISPs. This result would clearly contradict the Commission's goals to promote competition in the local market and stimulate growth in the information service industry.

### **III. ILECS SHOULD NOT BE PERMITTED TO UNLAWFULLY DISCRIMINATE BETWEEN ISP TRAFFIC EXCHANGED BETWEEN INCUMBENT AND COMPETITIVE LECs**

The Commission has declared that "reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call."<sup>7</sup> Incumbent LECs, Bell Atlantic Corporation (Bell Atlantic) and NYNEX Corporation (NYNEX) in particular, are attempting to avoid paying transport and termination charges to competitive LECs by claiming that ISP traffic is interstate traffic and therefore not eligible for reciprocal compensation. Indeed, MCI has encountered problems with NYNEX due to its refusal to compensate MCI for the transport and termination of ISP traffic.<sup>8</sup>

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<sup>7</sup> Local Competition Order, ¶ 1034.

<sup>8</sup> Letter from Patrick Garzillo, Managing Director, Local Carrier Markets, NYNEX to Denise [sic] Kern, Vice President, Eastern Operations, MCI Metro, dated April 15, 1997 (appended hereto as Attachment A). In its

Incumbent LECs should not be permitted to unilaterally declare that ISP traffic is interstate and refuse to compensate competitive LECs for the transport and termination of ISP traffic.

Based on information available to MCI,<sup>9</sup> the incumbent LECs have no problem treating ISP traffic as local for purposes of compensating adjacent LECs for transport and termination of ISP traffic. According to ALTS, the interconnection agreements on file with state commissions do not distinguish between calls to an ISP within a local calling area that are exchanged between LECs, and any other kind of local traffic exchanged between LECs.<sup>10</sup> Indeed, whether a call is local should be determined by the calling area, not by the carrier or the identity of the customer.

The Commission did not limit or create exceptions to the reciprocal compensation obligation when competing LECs were involved. Indeed, the Commission rejected NYNEX's argument that reciprocal compensation obligations be applicable only to competitive LECs and determined that "section 251(b)(5) obligations apply to all LECs in the same state-defined service areas."<sup>11</sup> Incumbent LECs must accept that all traffic will no longer terminate on their networks and compensation to all LECs is now required.

Surely, the incumbent LECs' reciprocal compensation obligation is not limited to local traffic exchanged between themselves. Moreover, as discussed above, disparate or discriminatory treatment by incumbent LECs would in effect eliminate the incentive for competitive LECs to offer service to ISPs. As a result, ISPs would be restricted to taking

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letter, NYNEX informed MCI that in NYNEX's view, ISP traffic is interstate and therefore not eligible for reciprocal compensation under the interconnection agreement with MCI.

<sup>9</sup> ALTS Letter at 7; Letter from the State of New York Department of Public Service to William Allan, Vice President, Regulatory Matters, New York Telephone Company, at 1, dated May 29, 1997.

<sup>10</sup> ALTS Letter at 7, n.9.

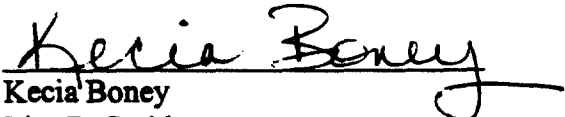
<sup>11</sup> Local Competition Order, ¶ 1037.

service from the incumbents, at prices set by the incumbents. Indeed, as ALTS observed, the incumbents would in effect penalize ISPs that choose competitive LEC service because only ISPs that choose incumbent LECs would enjoy local rates.<sup>12</sup> ISPs should not be required to rely solely on the incumbent LECs' end-to-end networks. This would clearly impede competition and prevent local rates for ISPs.

#### IV. CONCLUSION

Expedited action is necessary in order to avoid further attempts by incumbent LECs to undermine the ability of competitive LECs to serve ISPs. MCI therefore urges the Commission to clarify that competitive LECs are entitled to receive reciprocal compensation for the transport and termination of ISP traffic.

**MCI TELECOMMUNICATIONS  
CORPORATION**

  
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Dated: July 17, 1997

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<sup>12</sup> ALTS Letter at n. 10.

**ATTACHMENT A**

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Tel 914 664 4759  
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Patrick A. Garrillo  
Managing Director, Local Carrier Markets

**NYNEX**

April 15, 1997

Denise Kern  
Vice President, Eastern Operation  
MCI Metro  
8521 Leesburg Pike  
Vienna VA 22182

Dear Denise:

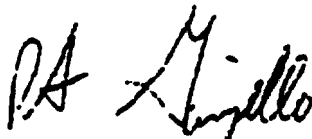

NYNEX has been receiving bills seeking reciprocal compensation for traffic that is being delivered to Internet Service Providers ("ISPs"). It is our view that such traffic is interstate in nature and not eligible for reciprocal compensation under the FCC's rules.

NYNEX is conducting a study to determine the number of minutes that were delivered to ISPs in February of this year. Once this study is completed, we will then ask that you issue us a credit for any reciprocal compensations bills that we have already paid. If our study shows that you delivered Internet traffic to us, we will issue an offsetting credit. In addition, we would like you to agree that neither of us will include Internet traffic in future bills for reciprocal compensation.

Please confirm your agreement by signing the enclosed copy of this letter. If we cannot reach an agreement, NYNEX will withhold payment of reciprocal compensation bills pending resolution of this issue. We hope that will not be necessary.

If you have any questions, I will be glad to discuss this matter further with you.

Sincerely,

*PA Garrillo*  
  


Agreed to:

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